

# IN THE DISTRICT COURT OF ROCK COUNTY, NEBRASKA

BCD FARMS, INC.,

Plaintiff,

vs.

SANDHILLS CATTLE FEEDING, INC.  
and LARRY CARLSON, and ROGER  
PEARSON,

Defendants.

Case No. CI02-1

## ORDER ON MOTIONS TO COMPEL

**DATE OF HEARING:** August 30, 2002.

**DATE OF RENDITION:** November 24, 2002.

**DATE OF ENTRY:** Date of filing by court clerk (§ 25-1301(3)).

**TYPE OF HEARING:** In chambers at District Courtroom, Brown County  
Courthouse, Ainsworth, Nebraska, pursuant to § 24-734.

**APPEARANCES:**

For plaintiff: Todd Flynn.

For defendants:

SCF & Carlson: Galen E. Stehlik.

Pearson: No appearance.

**SUBJECT OF ORDER:** Plaintiff's: (1) motion to compel discovery filed July 30,  
2002, and, (2) motion to compel filed August 22, 2002.

**PROCEEDINGS:** See Journal Entry rendered on August 30, 2002, and  
entered on September 3, 2002.

**FINDINGS:** The court finds and concludes that:

1. At the times relevant to these discovery issues, the defendant Pearson was not participating in the action. All references herein to "the defendants" mean Sandhills Cattle Feeding, Inc. and Larry Carlson.

2. Paragraphs 1 and 2 of the July 30 motion address plaintiff's notice of intention to issue Rule 34A subpoenas duces tecum (Exhibit 7) to Union Bank of Grand Island, United Nebraska Bank, and National Insurance. The defendants served written objection (Exhibit 8) to such issuance on plaintiff. The plaintiff then filed the motion and gave requisite notice of hearing. Each Rule 34A item requests "any and all documents relating to Sandhills Cattle Feeding, Inc., including, but not limited to, [listed items]." Such a request is unreasonably intrusive and oppressive. The motion to compel should be denied as to such requests, such subpoenas shall not issue, and any request for expenses pertaining thereto should be denied.

3. Paragraph 3 of the July 30 motion and its subparagraphs address requests for production (Exhibit 9) served by plaintiff on or about February 27, 2002. The defendants served a written response (Exhibit 10). At the hearing, the plaintiffs withdrew paragraph 3.b. of the motion. The item addressed in paragraph 3.a. of the motion requests information, not documents. Such item comprises an interrogatory rather than a request for production of documents. Because the request was not properly prepared to invoke Rule 34, the motion to compel lacks merit. While paragraph 3.c. concerns a properly propounded request, the response appears to be complete and states that the document was previously provided to plaintiff, and the plaintiff failed to show that the identified documents were not so provided. This paragraph also lacks merit. Paragraph 3.d. concerns a list of employees "from October 15 to January 15" (Exhibit 9), which contrary to the motion does not specify the applicable years. The defendants are not required to guess or speculate. The request was insufficiently specific as to time, and accordingly that paragraph of the motion to compel lacks merit.

4. Paragraph 3.e. of the July 30 motion properly requested specific documents consisting of "all cancelled checks and/or payment records supporting veterinary work provided on behalf of BCD Farms, Inc. livestock from November 1, 2001[,] to December 31, 2001." (Exhibit 9, Request No. 11.) The defendants responded: "Payment of this

expense will be made when BCD Farms, Inc. pays its obligation to Sandhills Cattle Feeding, Inc.” (Exhibit 10.) This response is improperly ambiguous. It may be that defendants were intending to respond that no such canceled checks or payment records exist for the reason stated. But that is not the only possible interpretation of the response. Just as the plaintiff is required by Rule 34 to properly prepare and word its requests, the defendants are required to properly prepare and word their responses. That response fails to do so, and the motion to compel should be granted in that regard.

5. Paragraph 4 of the July 30 motion and its subparagraphs address requests for production (Exhibit 11) served by plaintiff on or about May 3, 2002. The defendants subsequently served responses to the requests (Exhibit 12). At the hearing, the plaintiff withdrew paragraph 4.a. of the motion. Paragraphs 4.b. and 4.c. concern requests Nos. 2 and 3 respectively. Request No. 2 seeks: “All loan documents including but not limited to . . . .” Contrary to what plaintiff may have intended, under the ordinary rules of grammar of the English language the specification of dates at the end of the sentence does not limit the general request for “all loan documents” because the “including but not limited to” phrase expressly precludes such an interpretation. Request No. 3 suffers from a similar flaw. The requests *as propounded by the plaintiff* exceed the scope of discovery under Rule 26. This court should not attempt to rescue such a request by a tortured reading. Paragraph 4.d. references request No. 4, seeking “[l]ist of all collateral encumbered in securing loans for the operation, maintenance and capital for Sandhills Cattle Feeding, Inc.” This request is ambiguous. To the extent that it requests specification of information, it constitutes an improperly propounded interrogatory rather than a request for production. But to the extent that it may be interpreted to seek production of such a list, if in existence, the request does not appear to be relevant to the subject of the plaintiff’s claims. Paragraph 4.e. clearly represents an improperly propounded interrogatory rather than a request for production. Nonetheless, pages 3 and 4 of Exhibit 12 appear to respond and the plaintiff’s evidence fails to show how the defendants improperly responded to something that never

constituted a request for production in the first place. Similarly, paragraph 4.f. clearly represents an improperly propounded interrogatory rather than a request for production. The defendants' objection addressed an alternative argument, but their objection does not cure the basic defect that it is not a proper request for production. Paragraph 4 should be denied in all respects.

6. At the hearing, paragraphs 1 and 2 of the August 22 motion were withdrawn.

7. Paragraph 3 of the August 22 motion and its subparagraphs address requests for production (Exhibit 16) served by plaintiff on or about June 20, 2002. The defendants served responses thereto (Exhibit 17). Subparagraph 1 of paragraph 3 concerns plaintiff's request No. 1, which seeks specific "feed sheets or records . . . used to determine ration, pen [l]ot for feed distribution . . . ." The defendants' response asserts that the "information" was already provided in feed bills. The plaintiff is entitled to the production of the *underlying documents* upon which such information was premised. Subparagraph 2 concerns plaintiff's request No. 2 seeking "handwritten processing and medical treatment records" over a specified period. While the request suffers from a certain level of ambiguity, the defendants object only that "records for all other cattle have no relevance to this case." Contrary to defendants' assertion, such documents may have relevance and the plaintiff is not obliged to rely on the defendants' bare statements. Both paragraphs of the motion should be granted.

**ORDER:**

IT IS THEREFORE ORDERED that:

1. Paragraph 3.e. of the July 30 motion is granted, and the defendants (Sandhills Cattle Feeding, Inc. and Larry Carlson) are ordered to supplement their response to the request within 14 days from the date of entry of this order and, if such supplemental response discloses the existence of such records, to further produce copies of the same to the plaintiff's counsel at the defendants' expense.

2. In all other respects, the July 30 motion is denied.

3. Paragraph 3 (including both paragraphs 3.1. and 3.2.) of the August 22 motion is granted in all respects and the defendants ordered to comply therewith by serving a supplemental response within 14 days from the date of entry of this order and to produce copies of such documents to the plaintiff's counsel at the defendants' expense.

4. The court will consider any claims of the plaintiff and the defendants for expenses of the motion or opposition to the motion under Rule 37(a)(4) and/or apportionment thereof at a hearing to be held in chambers at the District Courtroom, Brown County Courthouse, **Ainsworth**, Nebraska, on **Friday, December 6, 2002**, at **10:30 a.m.**, or as soon thereafter as the same may be heard. The evidence at such hearing will be limited to affidavits and arguments only. Failure to appear at such hearing shall constitute a waiver of such party's claim for expenses.

Signed in chambers at **Ainsworth**, Nebraska, on **November 24, 2002**;  
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

☒ Mail a copy of this order to all counsel of record and any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

☒ Note the decision on the trial docket as: [date of filing] **Signed "Order on Motions to Compel" entered.**  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

☐ Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

☐ Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

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William B. Cassel  
District Judge

Mailed to: